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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TODD R.G. HILL,

Plaintiff,

v.

THE BOARD OF DIRECTORS, OFFICERS AND AGENTS AND INDIVIDUALS OF THE PEOPLES COLLEGE OF LAW, et al.,

Defendants.

Case No.: 2:23-cv-01298-CV (BFM)

STATE BAR DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S INTERIM REPORT AND RECOMMENDATIONS

MAGISTRATE JUDGE: Hon. Brianna Fuller Mircheff

DISTRICT JUDGE: Hon. Cynthia Valenzuela

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Plaintiff Todd Hill ("Plaintiff") objects to nearly every recommendation made in the Interim Report and Recommendation issued by United States Magistrate Judge Brianna Fuller Mircheff on February 12, 2025 (the "Report"), Dkt. 213. *See* Dkt. 217. For the reasons described below, Plaintiff's objections are meritless. As such, this Court should not consider Plaintiff's objections in its de novo review of the Report.

I. ARGUMENT

A. Eleventh Amendment Immunity Bars Plaintiff's Claims Against the State Bar Defendants

Plaintiff first objects to those portions of the Report recommending that the State Bar Defendants are entitled to Eleventh Amendment immunity as to all of Plaintiff's claims except for his eighth cause of action under Title IX, which fails for numerous other reasons. *See* Report at 21–24, 28 (citing Dkt. 132 at 17–22). Plaintiff argues that his claims against the State Bar Defendants should survive under the *Ex parte Young* exception to sovereign immunity.[1] *See* Dkt. 217 at 11–12, 15–17. Plaintiff further objects on the grounds that "discretionary regulatory actions are not immune from suit" and Plaintiff should be permitted to develop the factual record to determine whether the State Bar Defendants are entitled to sovereign immunity. *Id.*

First, as to Plaintiff's argument that his claims should survive under *Ex parte Young*, as described more fully in the State Bar Defendants' Motion to Dismiss (Dkt. 172 at 20–21), the *Ex parte Young* exception to sovereign immunity "allows only prospective injunctive relief to prevent an ongoing violation of federal law." *Doe v. Lawrence Livermore Nat. Lab'y*, 131 F.3d 836, 840 (9th Cir. 1997). This is because the "Eleventh Amendment does not permit retrospective declaratory relief." *Lund v. Cowan*, 5 F.4th 964, 969–70 (9th Cir. 2021). Relief that is "aimed at remedying a past violation of the

[1] The State Bar Defendants are Defendants Louisa Ayrapetyan, Natalie Leonard, Leah Wilson, Brandon Stallings, Ruben Duran, Hailyn Chen, Audrey Ching, Melanie Shelby, Arnold Sowell, Jr., Mark Toney, Paul Kramer, Jean Krasilnikoff, Ellin Davtyan, George Cardona, Devan McFarland, and Enrique Zuniga.

law" is retrospective, whereas relief "aimed at remedying an ongoing violation of federal law" is prospective. *Cardenas v. Anzai*, 311 F.3d 929, 935 (9th Cir. 2002).

In this case, as explained in the State Bar Defendants' Motion, Plaintiff plainly seeks retrospective relief for past injuries—Plaintiff's purported inability to obtain a law degree or transcript from the Peoples College of Law and Plaintiff's frustration with what he perceives to be a lack of accountability from the school and failure to intervene by the State Bar. *See* Dkt. 172 at 20–21. Nor can Plaintiff plausibly allege any ongoing violations of federal law, given that per Plaintiff's own allegations, the State Bar revoked the Peoples College of Law's registration and terminated its degree-granting ability in May 2024. *See* TAC ¶ 114. The Magistrate Judge correctly recommended that the State Bar Defendants are entitled to sovereign immunity as to all claims except for Plaintiff's eighth cause of action under Title IX (which fails for numerous other reasons). *See* Report at 28 (citing Dkt. 132 at 17–22).

As to Plaintiff's objections that "discretionary regulatory actions" are not subject to sovereign immunity and that questions regarding sovereign immunity should be resolved through discovery, any authority cited by Plaintiff is inapposite. *See* Dkt. 217 at 12, 14 (citing *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154 (9th Cir. 2000) and *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012)). Contrary to Plaintiff's arguments, an entity's immunity from suit does not change depending on the nature of the action being challenged. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (noting that Eleventh Amendment immunity bars suits against the state and its agencies "regardless of the relief sought"). Nor is discovery necessary to determine an entity's Eleventh Amendment immunity. *Id.* at 147 (holding that an entity's entitlement to immunity does not present factual questions); *Kohn v. State Bar of California*, 87 F.4th 1021, 1037–38 (9th Cir. 2023) (holding that the State Bar is an arm of the state entitled to immunity).

Accordingly, Plaintiff's objections to the portion of the Report recommending that the State Bar Defendants are entitled to sovereign immunity except for Plaintiff's Title IX claim are meritless.

B. The Magistrate Judge Did Not Make Improper Factual Determinations

Plaintiff next objects to the Report on the ground that the Magistrate Judge purportedly made improper factual determinations in granting the State Bar Defendants' Motion to Dismiss. *See* Dkt. 217 at 13–14. Plaintiff argues that whether the State Bar permitted the Peoples College of Law to operate in violation of accreditation standards is a "factual dispute requiring discovery" and "not an issue that can be resolved at the motion-to-dismiss stage." *Id*. at 13.

Plaintiff is incorrect and appears to misunderstand the relevant standard for a motion to dismiss. Here, there is no discovery that would have been relevant to the Magistrate Judge's consideration of the State Bar Defendants' Motion to Dismiss. To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Nor is discovery necessary to determine a defendant's entitlement to Eleventh Amendment immunity, as discussed above. *See Puerto Rico Aqueduct*, 506 U.S. at 147; *Kohn*, 87 F.4th at 1037–38. Moreover, to the extent that Plaintiff believes that fact discovery can bolster the allegations in the TAC, courts may not "condone the use of discovery to engage in fishing expeditions." *Webb v. Trader Joe's Co*., 999 F.3d 1196, 1204 (9th Cir. 2021).

Accordingly, Plaintiff's objections regarding the Magistrate Judge's application of Federal Rule of Civil Procedure 12(b)(6) are meritless.

C. The Magistrate Judge Properly Exercised Her Discretion in Granting in Part and Denying in Part Plaintiff's Request for Judicial Notice

Plaintiff further objects on the ground that the Magistrate Judge did not fully grant his requests for judicial notice, in which Plaintiff requested that the Court take judicial notice of various documents and communications Plaintiff had with counsel for the defendants. *See* Dkts. 197, 199, 210. Plaintiff argues that the Magistrate Judge should

have taken judicial notice of all the documents and communications because "the Court cannot disregard relevant evidence." *See* Dkt. 217 at 18, 20–21.

However, Plaintiff fails to identify any specific fact appropriate for judicial notice and instead argues that the Magistrate Judge should have taken wholesale notice of all the documents submitted. *See* Dkt. 217 at 20–21 (arguing that the documents submitted were "evidence that supported Plaintiff's claims" and the Magistrate Judge's recommendation was an "improper suppression of the record"). Plaintiff again appears to misunderstand the relevant standards governing motions to dismiss and requests for judicial notice. As the Magistrate Judge noted, "[c]ourts do not take judicial notice of documents, they take judicial notice of facts" and such facts must meet the requirements of Federal Rule of Evidence 201. *See* Report at 10–11 (citing *Cruz v. Specialized Loan Servicing, LLC*, 2022 WL 18228277, at *2 (C.D. Cal. Oct. 14, 2022) and Fed. R. Evid. 201). The Magistrate Judge was not required to take wholesale judicial notice of every document submitted by Plaintiff, particularly where Plaintiff failed to demonstrate how the facts contained therein met the requirements of Rule 201. *See* Dkts. 197, 199, 210; *United Safeguard Distributors Ass'n, Inc. v. Safeguard Bus. Sys., Inc*., 145 F. Supp. 3d 932, 942 (C.D. Cal. 2015) (a court may deny a request for judicial notice where the documents are not proper subjects for judicial notice or the facts contained therein are not relevant to the claims at issue).

Accordingly, Plaintiff's objections regarding his requests for judicial notice are meritless.

D. The Magistrate Judge Applied the Correct Legal Standards to Plaintiff's Title IV, Equal Protection, and Civil RICO Claims

Plaintiff next objects on the grounds that the Magistrate Judge made various legal errors regarding the standards for Plaintiff's Title VI, equal protection, and civil RICO claims. *See* Dkt. 217 at 21–25. Plaintiff is mistaken and the Magistrate Judge identified the correct legal standards governing these claims.

As to Plaintiff's first and third causes of action for equal protection and Title VI violations, the Magistrate Judge correctly recommended that these claims require Plaintiff to plausibly allege racial discrimination based on intentional conduct. *See* Report at 17–18 (citing *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994) and *Alexander v. Choate*, 469 U.S. 287, 293 (1985)). Although Plaintiff argues that his claims should survive under a disparate impact theory, the Magistrate Judge specifically rejected this argument. *See* Report at 2, 15–16 (recommending that Plaintiff had not plausibly alleged any racially disparate impact given that "the policies and practices emphasized by Plaintiff apply universally to all students, and Plaintiff presents only conclusory allegations that those policies had a disparate impact on African American students"). Thus, the Magistrate Judge properly recommended that Plaintiff's equal protection and Title VI claims against the State Bar Defendants be dismissed because Plaintiff did not plausibly allege either a disparate impact theory or intentional discrimination. *See* Report at 14–19.

As to Plaintiff's fourth cause of action for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), the Magistrate Judge correctly recommended that Plaintiff's RICO claim fails for numerous reasons, including that Plaintiff has not plausibly alleged the existence of a RICO enterprise. *See* Report at 19–21. As the Magistrate Judge noted, because the TAC includes only a single conclusory allegation that the defendants purportedly "engaged in a coordinated effort to defraud and exploit African American students, including Plaintiff" (TAC ¶ 188) and at most, alleges that the State Bar Defendants failed to regulate the Peoples College of Law, such allegations are insufficient to allege the existence of a RICO enterprise. *See* Report at 19 (citing *Boyle v. United States*, 556 U.S. 938, 946 (2009)). Plaintiff's argument that a RICO enterprise does not require a formal agreement among all members fails to grapple with the substance of the Magistrate Judge's recommendation—that the TAC does not plausibly allege the existence of an enterprise and indeed, appears to allege a regulatory failure

instead of the "common purpose" required to state a RICO claim. *See* Dkt. 217 at 23–24; Report at 19–21.

Accordingly, Plaintiff's objections to the portion of the Report in which the Magistrate Judge recommended dismissal of Plaintiff's Title VI, equal protection, and civil RICO claims are meritless.

E. There Is No Basis for Declaratory Relief Where There Are No Remaining Claims Against the State Bar Defendants

Plaintiff further objects on the ground that the Magistrate Judge purportedly failed to address his request for declaratory relief that the State Bar failed to enforce accreditation standards. *See* Dkt. 217 at 5–6. However, declaratory relief is a form of relief, not a substantive claim or cause of action. *See Est. of Singh v. Wells Fargo Bank, N.A.*, 2022 WL 1457968, at *6 (N.D. Cal. May 9, 2022) ("Declaratory relief is a form of relief, not a substantive claim or cause of action. Because Plaintiff's other three claims fail as a matter of law, there is no basis for declaratory relief."). Here, because the Magistrate Judge recommended that each of Plaintiff's claims against the State Bar Defendants be dismissed without leave to amend and the State Bar Defendants dismissed with prejudice from this suit, no claim remains against the State Bar Defendants for which declaratory relief would be available.

Accordingly, Plaintiff's objection regarding his request for declaratory relief from the State Bar Defendants is meritless.

F. The Magistrate Judge Correctly Exercised Her Discretion in Recommending Denying Plaintiff's Motion for Leave to Amend the TAC

Plaintiff further objects to the Magistrate Judge's recommendation denying his motion for leave to amend the TAC. *See* Dkt. 217 at 9, 16, 23, 26. As discussed in the Report, Plaintiff has filed four pleadings—the original Complaint, FAC, SAC, and TAC—each of which has suffered from various pleading issues. *See* Report at 3.

Here, the Magistrate Judge recommended denying Plaintiff's motion for leave to amend the TAC but granted Plaintiff limited leave to amend certain claims asserted

against defendants associated with the Peoples College of Law. *See* Report at 31–32 (granting Plaintiff leave to amend only the second, fourth, sixth, and seventh causes of action against defendants associated with the Peoples College of Law). The Magistrate Judge recommended denying leave to amend any claim against the State Bar Defendants based on futility and Plaintiff's failure to state a claim. *See* Report at 28–30 (citing Fed. R. Civ. P. 15 and *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006)). As explained in the Report, the Magistrate Judge recommended granting Plaintiff only limited leave to amend given that Plaintiff has already filed four pleadings and has had multiple opportunities to correct any pleading deficiencies. *See* Report at 3, 28–30. A court has discretion to deny leave to amend and this discretion is "particularly broad" where a plaintiff has previously been given opportunities to amend. *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 879 (9th Cir. 1999). Plaintiff provides no explanation as to why he should have been granted wholesale leave to file a Fourth Amended Complaint given the procedural history of this litigation and the prior opportunities that he has been given to amend his pleadings. *See* Dkt. 217 at 9, 16, 23, 26.

Accordingly, Plaintiff's objection regarding the Magistrate Judge's recommendation that his motion for leave to amend the TAC be denied and Plaintiff be granted only limited leave to amend is meritless.

G. A Case Management Conference Is Not Necessary in This Case

Finally, Plaintiff requests a Case Management Conference in this case to "address outstanding procedural issues, including the ruling on judicial notice, the potential for discovery, and whether amendment is appropriate." *See* Dkt. 217 at 27. Any such request is not properly asserted in objections to the Report and a conference to further discuss the recommendations in the Magistrate Judge's Report is not necessary. Accordingly, Plaintiff's request for a conference should be denied.

II. CONCLUSION

For the foregoing reasons, Plaintiff's objections are meritless and irrelevant to this Court's de novo review of the Report. Consistent with the Magistrate Judge's Report, the

State Bar Defendants' Motion to Dismiss should be granted in its entirety, Plaintiff's claims against the State Bar Defendants be dismissed without leave to amend, and the State Bar Defendants dismissed from this suit.

Dated: March 6, 2025

Respectfully submitted,

By: /s/ *JENNIFER KO*
JENNIFER KO
Assistant General Counsel

Attorneys for Defendants
Louisa Ayrapetyan; Natalie Leonard; Leah Wilson; Brandon Stallings; Ruben Duran; Hailyn Chen; Audrey Ching; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; Paul Kramer; Jean Krasilnikoff; Ellin Davtyan; George Cardona; Devan McFarland; Enrique Zuniga

DECLARATION OF SERVICE

I, Ryan Sullivan, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, CA 94105. On March 6, 2025, following ordinary business practice, I filed via the United States District Court, Central District of California electronic case filing system, the following:

STATE BAR DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S INTERIM REPORT AND RECOMMENDATIONS

Participants in the case who are registered CM/ECF users will be served.

See the CM/ECF service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, on March 6, 2025.

Ryan Sullivan

Ryan Sullivan